CLAUSES 11 TO 30.

Mr. SPEAKER.—The question is:

"That clauses 11 to 30, both inclusive, stand part of the Bill."

The motion was adopted.

Clauses 11 to 30, both inclusive, were added to the Bill.

SCHEDULE

Mr. SPEAKER.—The question is:

"That schedule stand part of the Bill.'

The motion was adopted.

The schedule was added to the Bill.

CLAUSE 1, THE TITLE AND THE PREAMBLE

Mr. SPEAKER.—The question is:

"That clause 1, the Preamble and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Title and the Preamble were added to the Bill.

Motion to pass.

Sri M. V. RAMA RAO.—I beg to move:

"That the Mysore Civil Courts Bill, 1962, as reported by the Joint Select Committee, be passed."

Mr. SPEAKER.—The question is:

"That the Mysore Civil Courts Bill, 1962, as reported by the Joint Select Committee, be passed."

The motion was adopted.

[MR. DEPUTY SPEAKER in the Chair.]

MYSORE SMALL CAUSE COURTS BILL, 1962

As reported by the Joint Select Committee.

(*Motion to consider*).

Sri M. V. RAMA RAO.—I beg to move:

"That the Mysore Small Cause Courts Bill, 1962, as reported by the Joint Select Committee, be taken into consideration."

MR. DEPUTY SPEAKER.—Motion moved :

"That the Mysore Small Cause Courts Bill, 1962, as reported by the Joint Select Committee, be taken into consideration."

†SRI M. V. RAMA RAO.—In commending this bill as reported by the Joint Select Committee for the acceptance of the House, I briefly refer to the fact that the Small Causes jurisdiction is in fact exercised by munsiffs' courts or equivalent courts, by whatever name mentioned, even at present. The only provision by way of change that is made in this bill is that the pecuniary jurisdiction of the small causes judge is proposed to be enhanced from the present limits in the case of munsiffs upto Rs. 500 and in the case of the civil judge, who will preside over the court of small causes, upto Rs. 2000. That is the main point, which we have to notice. It will be observed from clauses 4 and 5 that it will be a civil judge who will preside over the court of small causes after it is established under section 3. Then the list of matters which are excepted from the cognisance of the court of small causes are given under the schedule of this bill and in that schedule, the Joint Select Committee, after making a very careful examination of all the entries in the schedule, have considered and recommended with all suits to set aside a judgment of both movable and immovable properties should be excluded from the jurisdiction of the courts of small causes.

These are the main features of the Bill and I request the House may be pleased to accept the Bill as reported by the Joint Select Committee.

3-30 P.M.

† SRI G. V. GOWDA.—Mr. Speaker, if an officer of the cadre of civil judge is to be appointed to the Small Cause Court, it is supposed that the pecuniary jurisdiction that is put here should have been something more. If he is asked to try cases that will not exceed in value more than Rs. 500/-, it is something ridiculous, because the judge is of a civil judge's cadre and you are asking him to try suits of a value not exceeding 500. It is something irreconcilable. But if the court is to be established under this Act at Bangalore, to ask that civil judge to try suits of a civil nature where the value does not exceed Rs. 500 or Rs. 2,000 as has been suggested in the brochure is too inadequate a pecuniary jurisdiction in my opinion. If the Civil Judge is functioning in a Civil Judge's court, he is competent to hear appeals from the orders of munsiff and he has got unlimited pecuniary original civil jurisdiction. Such being the case, his powers will be restricted if he is appointed as civil judge in the small cause court. Therefore, I am suggesting that at least this pecuniary jurisdiction enhanced to Rs. 2,000. I personally feel that in consultation with the High Court, the Government may enhance the pecuniary jurisdiction to Rs. 5,000.

So far as the application of the Code is concerned as envisaged under Clause 10, I do not know whether this particular clause is properly worded. Sir, what exactly is to be done when there is an *ex parte* order

or decree or review the judgment as provided in the Civil Procedure Code. As a matter of fact, if an *exparte* decree from the munsiff's court or Civil Judges' Court or the district court is to be passed, what is the exact procedure to be adopted has been provided under the Civil Procedure Code.

Mr. DEPUTY SPEAKER.—Since there is no quorum, we can adjourn for fifteen minutes.

The House adjourned at Thirty-five Minutes past Three of the Clock and reassembled at Four of the Clock.

[Mr. Deputy Speaker in the Chair.]

Member's Representations

Sri SANJEEVANATH AIKALA (Surathkal).—The proceedings of the 7th are given to us now. I want to raise a small matter but it reflects very badly. Words are badly mis-spelt and there are several gramatical mistakes. Even the very name of the Speaker has been mis-spelt. My name has been put as 'Sanjivatha Ikala'.

Mr. DEPUTY SPEAKER.—It is purely an administrative matter. The Hon'ble Member may take the matter up in the Chamber of the Speaker. We will attend to it. Sri G. V. Gowda will now continue.

MYSORE SMALL CAUSE COURTS BILL, 1962.

As reported by Joint Select Committee.

Motion to consider—Debate continued

Sri G. V. GOWDA.—Sir, clause 6 deals with the appointment and functions of the Registrar attached to a Court of Small Causes. I do not know if the Registrar would be a person from the judicial services or he would just belong to the ministerial services. The clause provides that the High Court may by notification confer upon the Registrar the jurisdiction of a judge for the trial of suits. The Registrar would have a lot of work to do as a ministerial officer and would it be wise to entrust him with the jurisdiction of a judge for trial of suits where the sum involved does not exceed Rs. 50. If the Registrar is going to be a munsiff, I have no objection to his handling trial of cases if he is just going to be a ministerial officer, then it would definitely be bad and should not be allowed. I would ask whether it would be possible for a Registrar of the Court of Small Causes to devote attention or time for trial of suits. As we are aware the Court of Small Causes has jurisdic-

tion up to Rs. 500 and the trials would be of a summary character. The number of litigation would be considerable and the Registrar would have enough work to do on the ministerial side.

The Registrar is also authorised to execute decrees under Clause 14 if the Judge is absent. I fail to understand the relevancy of this clause. How can a Registrar, even a ssuming that instructions were left by the presiding officer who is absent, execute the decree passed by a civil judge. It is presumed that all decrees have to be executed by the court which passed the decree or the court to which it is duly transferred. I do not know how the registrar could be clothed with the power of execution of a decree passed by a civil judge.

The bill also provides that the Registrar may, if the judge concerned is absent, hear parties and if one of them admits a claim, he can, according to clause 13, pass a decree. I do not know how this would be consistent with the provisions of the Civil Procedure Code. In such a case, the parties can even approach the Registrar befor the day appointed for hearing of the case. I do not know how the parties can know that a suit has been filed, even before they receive summons and how the case could be disposed of before the appointed day. This seems to be a new provision, not contemplated under the C. P. C. I can understand a consent decree being issued on the appointed day by the Registrar, on instructions from the judge concerned.

I was referring to clause 10. The procedure contemplated is something different from the procedure under the C. P. C. When a decree is passed *ex parte* and an application is made to set aside, the discretion is vested in the judge to allow the application or reject it. Under this clause the defendant has to prefer an application and also deposit the sum of the claim or give security. This is an undue restriction imposed. This procedure is not consistent with the discretionary powers given under the Civil Procedure Code.

About the revision of decrees, if the High Court is satisfied that a decree or order made by a small causes court is contrary to law, then it can call for the records. Can it do so on its own motion or on the application of the party concerned. I want to know of this from the Hon'ble Minister for Law.

As there is provision for the constitution and establishment of small cause court, there is provision to keep the court of small causes. If there is really any purpose served by establishing the small cause court, why should there be any idea of abolishing small cause court ? As it is, there is no possibility of establishing these courts in any place except in Bangalore City; even in Madras, it is in Madras City and also in Bombay, Bombay City. There is no need to establish a separate small cause court anywhere in the State except in Bangalore City because there is no need for it. The jurisdiction that is vested in the small cause court is very limited. As it is with respect to property matter and with respect to other matters, they are excluded from the purview

of small causes court. Such being case, there is no need for establishing these courts anywhere in the State except perhaps Bangalore.

With these observations, I submit that the Hon'ble Minister would be pleased to see that in no case the Registrar appointed to the court of small cause court would be conferred with power to try suits and allowed to pass a decree or order in the absence of the Judge and execute the decree or order made by the Judge.

† SRI M. V. RAMA RAO.—Sir, I have been surprised at the objection taken to the provisions relating to the appointment of the Registrar and the functions which he has to exercise under this Act. Just a little while ago, when the Civil Courts Bill was being discussed, exception was taken to the supposed exercise of authority by the Government in the matter of establishing courts and determining where the court should be established and how many judges should be appointed and soon and so forth. Here, the objection is in respect of the exercise of similar powers by the High Court. Under clause 6, it is the High Court that appoints the officer who will be called the Registrar of the court and the Registrar in every case will be the Chief Ministerial Officer of the court for one thing. The High Court, may under sub-clause (3) of clause 6, by notification confer upon the Registrar if he is a person in the judicial service of the State—not a mere clerk or an accountant,—a person in the judicial service of the State—"the jurisdiction of a Judge for the trial of suits of which the value does not exceed fifty rupees." It is also provided that "the Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.". The Exercise of powers by the Registrar appointed by notification made by the High Court and in respect of a person who is in the judicial service of the State—it is in everyway so circumscribed that no apprehension of any kind need be entertained; as to the kind of person who will be appointed to the post and the manner in which he will exercise his powers and perform his functions.

Then it was pointed out in clause 18, the provision relating to the revisional powers of the High Court do not make it clear whether the revisional jurisdiction is to be exercised by the High Court and does not mean an order upon petition or application made before it by an agrieved person. Now the position in regard to the exercise of revisional jurisdiction is very fairly and very clearly understood everywhere. There is no power which can deprive the High Court of the authority to call for records in any case from any court subordinate to it, and to look into it and if satisfied that an erroneous or improper order has been made in a particular case, to revise the order or pass such orders as the High Court may in the circumstances consider fit. Here the provision in clause 18 is:

> "The High Court, for the purpose of satisfying itself, that a decree or order made in any case decided by a court of Small Causes was according to law, may call for the case and pass such orders with respect thereto, as it thinks fit."

(SRI M. V. RAMA RAO)

And the High Court normally would be invited to exercise its revisional jurisdiction on the civil revision petitions presented to it by persons considering themselves aggrieved by the conclusion or the findings made by the court of small causes. It would be exceptional indeed if in my opinion, the High Court were to call for records of a case otherwise than by a civil revision petition presented in due course in the normal manner. But there may be such exceptional cases where upon information received by the High Court other than by means of a civil revision petition filed in due course before the Registrar, in such cases, the High Court is not precluded from calling for records of the case and examine and revise orders accordingly. Therefore, there is no disability imposed or uncertainty created by it. That is in regard to the provision in clause 18.

Then the main point of controversy or contention that was raised was in regard to the alleged incongruity under the provisions relating to the pecuniary jurisdiction of the court of small causes. Clause 8 which deals with the cogniyance of suits says:

> "(1) A court of small causes shall not take cognizance of the suits specified in the schedule as suits excepted from the cognizance of a Court of Small Causes."
>
> "Subject to the exceptions specified in the Schedule and to the exceptions of any law for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes:
>
> "Provided that the State Government, in consultation with the High Court, may by notification, direct that all suits of which the value does not exceed two thousand rupees shall be cognizable by a Court of Small Causes mentioned in the notification."
>
> "Save as expressly provided by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction, within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."

The Hon'ble Member who spoke on this Bill is aware that the same Court in many places, especially in mofussil parts, exercises original as well as small cause jurisdiction. Munsiff's court for instance. Whatever the limits of the pecuniary jurisdiction of the munsiff's court in a particular place, whether it is Rs. 3,000 or 5,000 or 10,000 or whether it is any other amount, the munsiff's court exercises in the ordinary course original civil jurisdiction in respect of causes which come up before it for trial. Simultaneously, the same court functioning as a small causes court and guiding itself by the procedure laid down for the trial of small causes both in the Code of Civil Procedure and elsewhere will be

functioning as a Court of Small Causes in respect of matters the value of the subject-matter of which is limited to a specified sum. Under the prescribed arrangements, that sum specified is perhaps Rs. 50 or 100 or 200. In the courts which have been functioning in places which were formerly in the State of Madras, the amount fixed as the limit for the exercise of small cause jurisdiction is one; in other areas it is another. Therefore, with a view to bringing about what may be described as uniformity in such matters, this provision has been made that the exercise of small cause court jurisdiction will be in respect of matters the value of the subject-matter of which would be Rs. 500:

> "Provided that the State Government, in consultation with the High Court, may by notification, direct that all suits of wh ch the value does not exceed two thousand rupees shall be cognizable by a Court of Small Causes mentioned in the notification."

This notification may be issued conceivably by the High Court only in the case of Small Cause Court presided over by a Civil Judge. The Honourable Member's argument, if I understood him aright, was that there was no reason why the exercise of small cause powers by a civil judge presiding over a small cause court should be restricted to Rs. 2,000 and why it should not be raised to a higher figure, for instance Rs. 5000. I shall tell him why. This procedure of trying causes according to the procedure for the trial of small causes is the procedure which is in the main different from and sometimes dangerously different from the procedure which is prescribed for the trial of original causes. The procedure for the trial of original causes requires that after the pleadings have been filed in court, the court shall frame issues with reference to the facts in dispute and proceed to record evidence on both sides of the cause upon every one of the issues so framed and proceed to give findings in respect of the framed issues. In respect of small causes the framing of issues is not prescribed; no issues need be framed; only the points for determination. If these points are at all obscured from the proceedings, that obscurity should be clear on the points specified recorded by the Judge as the points for which determination has to be made by the court.

The second ponit of important departure in the matter of procedure to be followed for the trial of small causes is that the evidence which a court has to record is not recorded verbatim in the language employed by the witness who answers the questions. The substance of the examination of a witness is taken down, is reduced to writing by the Judge. Now there would be, in my opinion, legitimate room for believing that this procedure of recording the substance of the evidence by a witness should be limited and restricted to cases where the subject-matter has a specified or limited value. To extend the procedure with the trial of cases where the subject-matter is of the value of, as was suggested by the Honourable Member, Rs. 5,000 may not be quite reasonable. Although Rs. 5,000 would represent a much smaller sum in

terms of what money meant 10 years or 20 years back, still Rs. 2,000 is a pretty good sum of money and except in important commercial places like the city of Bangalore or other large urban areas, a sum of Rs. 2,000 would probably represent a fortune to a litigant and to say that the small cause procedure may be followed in respect of the trial of suits the subject-matter of which is of the value of more than Rs. 2,000 may not be reasonable and for that reason, I am of opinion that this provision is satisfactory and should be allowed to remain.

In respect of clause 10, it was suggested that this clause lays down a procedure which is already contained in the Code of Civil Procedure and should therefore either be modified or removed. Now, the procedure prescribed in the Code shall, save in so far as is otherwise provided by the Code or by this Act, be the procedure followed in the Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits.

4-30 P.M.

Provided that an applicant—

for an order to set aside a decree passed *ex parte* on grounds other than that summons in the suit was not duly served, or for a review of judgment on grounds other than a mistake or error apparent on the face of the record, shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf have directed. The category of cases in which this proviso will apply has been clearly laid down. Where an application for setting aside the decree on the grounds that the summons in the case was not duly served has been made, the Court will proceed to hear that application in the manner laid down in the Civil Procedure Code. But where the application is based on ground other than that summons were not duly served, the applicant is bound, under this clause, to deposit at the time of presenting the application, the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree. That, I consider, is a reasonable provision because it is seen that in the court of small causes the number of cases that are called and disposed of in the course of 2 hours or 2½ hours on a working day would be a few hundred. As a matter of fact, it is known to every practicing advocate that in the matter of trial of small causes, the bulk of the litigation relates to loans advanced, money taken and not repaid or money taken and not accounted for and claims of that kind. So, the procedure is litted in hearing the defendent whether he has received the money or not; if he has received, whether he has

repaid it. The pleas are recorded and if they deserve for taking up trial, a summary or gist of the evidence is recorded and the court proceeds to give its findings and those findings are final and can be questioned only by way of revision in the High Court.

Now, having regard to this sort of procedure prescribed for the trial of these cases, if the applicant makes an application for setting aside that decree on the grounds other than that summons were not duly served to him, in regard to these matters the court must be satisfied that there is something which is deserving of the time and the attention of the court and it is for that reason that it is required that either he should deposit in the court for which a decree has already been passed against him and which he did not defend on the proper occasion or give such security for the performance of the decree and in the other case for a review of judgment on grounds other than a mistake or error apparent on the face of the record. The party should satisfy the decree first and then invite the court to investigate the matter and in the end he has the right, he is entitled, to take back the money. In the matter of suits based on promisory and other negotiable instruments where these suits are filed on the original side or on appeal to High Court for instance, and many other cases cannot be defended as a right before the case which is set down for hearing comes up, the defendant has to apply for leave to defend the suit. The plea that can be taken in defence of that suit has got to be formulated before hand and the court should permit him to defend that the plea is tenable and in the opinion of the court the plea may be allowed with a view to see whether the claim is unforseble against the defendant or the plea is justifiable. Therefore, I would say, there is no reason why exception may be taken to this clause. Then, I may say in conclusion that under this Act, apart from the investiture of powers to try small causes by munsiff's presiding over munsiff's courts by notification issued by the High Court, the only other court that would function under this Act would be the court of small causes in Bangalore. And that court in the ordinary course, as at present, would be presided over by a Civil Judge who would be normally a senior judicial officer and can be trusted to exercise the power of summary trial in a judicious manner and therefore no injustice would be there, not withstanding the summary proceedings. With these observations, I request that this Bill, as reported by the Joint Select Committee, be taken into consideration.

Mr. DEPUTY SPEAKER.—The question is :

"That the Mysore Small Cause Courts Bill, 1962, as reported by the Joint Select Committee, be taken into consideration."

The motion was adopted.

Mr. DEPUTY SPEAKER.—Now clauses. The question is :

"That clauses 2 to 7, both inclusive, stand part of the Bill.

The motion was adopted.

Clauses 2 to 7, both inclusive, were added to the Bill."

CLAUSE 8.

Sri G. V. GOWDA.—I am not moving the amendment.

Mr. DEPUTY SPEAKAR.—The question is :

" That clauses 8 and 9 stand part of the Bill."

The motion was adopted.

Clauses 8 and 9 were added to the Bill.

CLAUSE 10.

Sri G. V. GOWDA.—Sir, I beg to move :

'That in) sub-clause (1) lines 2 and 3, the words " or by this Act " shall be deleted.'

" That the proviso to sub-clause (1) shall be deleted. "

" That the sub-clause (2) shall be deleted. "

Mr. DEPUTY SPEAKER.—Amendment moved :

'That in sub-clause (1) lines 2 and 3, the words " or by this Act " shall be deleted.'

" That the proviso to sub-clause (1) shall be deleted. "

" That the sub-clause (2) shall be deleted. "

Sri G. V. GOWDA.—Sir, no doubt the Hon'ble Minister in charge of the Bill has been pleased to give a lengthy reply so far as clause 10 is concerned. Sir, the fact that there are a number of suits does not mean that the discretion that is vested in the judge under the Civil Procedure Code may be taken away. May be, the judge may exercise his discretion judicially. But, we must make a provision here that a particular thing has got to be done. There is no discretion left.

Though I was convinced with his reply in respect of clauses 8 and 18, so far as clause 10 is concerned, I beg to submit that whatever discretion is vested in the judge as per the provisions of the C.P.C. should not be sought to be taken away by this law.

[MR. SPEAKER in the Chair].

Supposing after an *ex parte* decree is passed, the defendant who originally owes Rs. 300 pays Rs. 200 as part payment. The lawyer may not have passed on the receipt. The defendant goes to the plaintiff and says he will pay the balance later on. There is an *ex parte* decree and executiou is taken for the entire Rs. 300 and then the defendant rushes to the Court and pleads that he is defrauded and wants the decree to be set aside. But for the interference of the plaintiff, he would have gone to the Court even earlier. In such circumstances if the Court were to insist that the defendant should pay Rs. 300 for setting aside the decree, it would be a great burden on the judgment-debtor.

The discretion to demand deposit or security should vest in the judge and he should, depending on circumstances, insist or waive the deposit. The C.P.C. lays down a procedure in this respect and that should not be varied under this clause. That is my submission.

Mr. SPEAKER.—The Hon. Member should take note of the words "the previous application made by him in this behalf." That means that this application is the second one. In the 2nd application, th Judge should demand deposit.

Sri G. V. GOWDA.—The sentence presupposes that there wa another application for setting aside the *ex parte* order which has already been filed and that judge has given a direction which has not been complied with and therefore deposit is being demanded. It follows that it is not the first application. But if the orders on the first application are not complied with, then the second application would automatically be rejected.

Mr. SPEAKER.—"On the grounds other than that summons in the suit was not duly served..... ". Therefore the application is made n a case where a decree is passed and an affidavit has been made. The application the Hon. Member is having in mind is some other application.

Sri G. V. GOWDA.—He assigns some other reason. The bus came late. He was prevented by an accident and therefore could not be in the court in time. Or the process server called his name, he could not hear and therefore missed the case. Several reasons might be adduced.

Mr. SPEAKER.—The Provisions of the Civil Procedure Code stand unabridged. The State Government cannot amend the Central Act.

Sri G. V. GOWDA.—My submission is, it goes to the extent of taking away discretion vested in the Judge under the Civil Procedure Code.

Mr. SPEAKER.—I extend the time for the consideration of the Bill by another one hour.

Sri G. V. GOWDA.—Since there is a definite procedure fixed in the Civil Procedure Code, it stands.

Mr. SPEAKER.—Where is the need for doubt that this is going to abridge the right under the Civil Procedure Code ? The Civil Procedure Code is a Central subject. To my mind, it looks as if the application contemplated under Section 10 is a Second application because it covers both (*a*) and (*b*).

Sri G. V. GOWDA.—This presupposes as you have been pleased to say, a second application. So far as the first application is concerned, the Civil Procedure Code provisions apply. So far as the second application is concerned, it contemplated that the judge should insist that a particular thing should be done.

Mr. SPEAKER.—Was he not a member of the Select Committee ?

Sri G. V. GOWDA.—I was not, Sir. It is for the Hon'ble Minister to clarify. If it is a second application, I have no objection because it would not infringe the provisions of the Civil Procedure Code. Hence I submit that the Hon'ble Minister may kindly accept my amendment. I have requested for the delection of the words "by this Act" in clause 10.

Mr. SPEAKER.—Why should the Hon'ble Member deny the party further chance ?

Sri G. V. GOWDA.—The Hon'ble Minister was saying that since there were lots of suits of this nature, in order to restrain people from coming before courts with frivolous applications, this clause is incorporated. Here the Judge is required to insist upon a particular thing being done. Therefore, I am requesting that this amendment of mine to the effect that the words "by this Act" may be deleted, may be accepted, Sir.

Mr. SPEAKER.—Clause 10(*a*) will not be a limitation on the general provisions of the Civil Procedure Code. This is all pervasive unless one reads it as a second application. There are two more amendments.

5-00 P.M.

†Sri V. M. DEO (Gubbi).—I feel that a Bill of this sort should never have come here. Many legal brains that are here in this auguat House, even they are finding it very hard to understand what is it all about. I feel that there should have been some sort of imagination when a Bill of this kind is to be brought before the House. Unimaginative Bills should not come before the House. At any rate this Bill should not have come before the House in view of the fact that all these clauses were framed at a time when the property rights prevailed to the exclusion of every other consideration. Apparently all our minds have failed to cope with the changed circumstances of this age.....

Mr. SPEAKER.—I do not know whether the Hon'ble Members would like to go and receive an esteemed guest who is coming. A suggestion is made to me that we might meet at 2 o'clock tomorrow. Would it be all right ?

HON'BLE MEMBERS.—Yes.

Sri V. M. DEO.—There is not much relevancy to bring a Bill of this sort at a time when everything of our administration has gone to pieces. When we feel that some change should be brought about, by all means have it, but let it be for the good. I would, therefore, appeal to the Government as well as to the members to see that this Bill is not accepted and that a new Select Committee may be constituted.....

Mr. SPEAKER.—Does he want this Report to be withdrawn, the Bill to be withdrawn and a fresh Committee to be appointed ?

Sri V. M. DEO.—My submission is that what is contained in this Report is not a relevant thing for the age in which we are living, particularly when the panchayatraj is to be ushered in. The Bill has been framed without having regard to the coming changes. Therefore, instead of having a sort of a uniformity which is in any case going to change, at any rate in four or five years even if you want to retain them, it is better to withdraw this measure.

† Sri KADIDAL MANJAPPA (Sringeri).—Mr. Speaker, Sir, I cannot say that I have thoroughly grasped the points at issue but I must submit that this is a procedure which is not contemplated under the provisions of the Civil Procedure Code. According to Section 10, if the judgment debtor seeks to set aside an *exparte* decree on the ground that summons were not duly served, he has to present an application for setting aside the decree and before doing so, he will have either to deposit the amount or take permission of the court to furnish security for the performance of the decree or compliance with the judgment. That means, before an application is filed, he has to either deposit the amount in the court or he must have made an application earlier seeking the direction of the court to permit him to furnish security for the performance of the decree.

Mr. SPEAKER.—The Hon'ble Member may kindly see that clause 10 provides for procedure. It says that the procedure shall primarily be the same as under the Civil Procedure Code except as otherwise provided by the Code or by this Act. If there is an express provision under the Civil Procedure Code, that prevails; If there is an express provision under this Act, that prevails. Therefore, there is nothing irreconcilable in this.

Sri KADIDAL MANJAPPA.—Sir, now the person has a right to file application for setting aside the decree even though he has not furnished security or deposited the amount. Sri G. V. Gowda is trying to show to the House that that right is taken away under this Bill.

[Mr. Deputy Speaker in the Chair.]

I further submit that the words "not duly served" are liable to be interpreted to the prejudice of the judgment-debtor. Sir, it is within our experience that some unscrupulous money lenders manage to secure *exparte* decrees by pocketing the process servers some times. In such cases, the process servers make an endorsement on the summons that summons were duly served or that the defendant refused to take the summons. In such cases, the service is deemed to have been made and deemed to be sufficient service. In such cases the judgment debtors would be put to lot of trouble, if they are compelled to furnish security as a condition precedent for filing an application for Setting aside the decree.

Under the provisions of the Civil Procedure Code, the judgment-debtor against whom an *exparte* decree is obtained can file an application for setting aside that decree without furnishing security or depositing the amount. But under clause 10 of this bill, under some circumstances, the judgment-debtor has to deposit the amount of the decree or to furnish security before fiiling an applcation for setting aside that *exparte* decree.

Mr. DEPUTY SPEAKER.—But if his application is based on the ground that the summons were duly served.....

Sri KADIDAL MANJAPPA.—Then he need not deposit but whether it was duly served or not, who is to decide ? The Court has to decide, I believe.

[MR. SPEAKER in the Chair.]

† Sri D. VENKATARAMAIAH (Robertsonpet).—It has been the experience of almost every practitioner, that ordinarily in all civil courts, particularly when the plaintiff is a permanent litigant of the court, almost every suit is decreed *exparte*. When an application is made for setting aside that *exparte* decree, usually the plaintiff who files the objection states that the application may not be allowed and if allowed deposit of the decretal sum and costs may be deposited in court. But from this clause we find that even before the application for setting aside the *exparte* decree is filed the defendat must deposit. Thus an onerous liability is cast on the application. He has to deposit the money and ask the permission of the court. In the hands of unscrupulous persons, it will work havoc. My submission is that at the time the application is filed.....

Mr. SPEAKER.—Suppose the application is filed. It might be said that no security was given under Section 36, or that client was not present or left no instructions. Then the application is dismissed and he files a fresh applicaton.

† Sri D. VENKATARAMAIAH.-I understand that such a contingency may arise. This will be dealt with under the ordinary Civil Code. Ordinarily, such an occasion would not arise, that is, the question of previous application and deposit of costs does not usually arise, when an appeal is preferred on a judgment. The respondent requests the appellate court to see that the appellant deposits the entire amount. But there is decree after the case had been contested in the lower court but the clause we are now dealing with refers to an *exparte* decree. If the defendant had been heard, I can understand that a previous application is necessary On the other hand, even at the very first instance, he is being asked to deposit. This is rather a big liability and I do not think we can find such a contingency in any other small causes acts in other States. The Law Minister may clarify if other enactments in other States contains such a provision. My submission is that this provision should go.

Mr. SPEAKER.—The section primarily deals with the procedure to be adopted by the court. The normal procedure of the C.P.C should be followed in all suits. The suits may be limited to the decree that has to be passed. There might also be certain incidental proceedings, say for review of a judgement or an interlocutory application might be made. The clause says that normal procedure laid down in the C.P.C. should be followed. But there is a proviso that if the application is for setting aside an *exparte* decree on grounds other than that summons in the suit was not duly served, then the application should make a deposit. The defendant pleads extraordinary circum-

stances which prevented him from coming. He says: " Despite my sincere endeavour I could not file my statement in time. I do not choose to lead any fresh evidence. I am content with a review of the judgment on the ground of a mistake or an error apparent on the face of the record. I contend that the suit is not cognizable by the Small Causes Court ". Such a plea goes to the root of the matter, that the decree itself is invalid. But here we are primarily concerned with procedure. This clause provides for contingencies disassociated from the merits of the case. In such cases, the defendant will have to deposit or give security for the performance of the decree or compliance with the judgment.

The word " previous " there does not entail a previous application. It means that the application must be previous to the hearing.

Sri A. P. APPANNA.–My submission Mr. Speaker, Sir, is when I file an application to set aside an *exparte* decree and when I have no money, then I must offer a security. Whether that security is acceptable to the court or not, the court must pass an order. For that I must file an application. That is what is contemplated, in this section. When I am filing an application to set aside the *exparte* decree and when I have no Money and when I offer a security, I must get an order from the Presiding Judge whether that security is acceptable or not. The presiding Judge cannot pass an order without an application. Therefore, I file this application offering the security praying the court to accept the security. And after the court passes an order that the security is acceptable, then furnish that security and file an application for setting aside an *exparte* decree. That is my submission.

5-30 P.M.

†ಶ್ರೀ ಸಿ. ಜೆ. ಮುಕ್ಕಣ್ಣಪ್ಪ.—ಸ್ವಾಮೀ, ಇದು ಏಕೋ ಹರಾಸಿಂಗ್ ಆಗಿ ಇಲ್ಲಿ ಕಾಣುತ್ತದೆ ಇದರಿಂದ ಬಹಳವಾಗಿ ಬಡವರಿಗೆ ತೊಂದರೆಯಾಗುತ್ತದೆ. ದಾವಾ ಹಾಕಿದವರು ಏನೂ ಹಣವನ್ನು ಕೋರ್ಟಿಗೆ ಕಟ್ಟದೇ ಹೋದರೆ ಆಗ ಅಂತಹವರು ಕೋರ್ಟಿಗೆ ಬಂದು ಏನನ್ನೂ ಹೇಳಿಕೊಳ್ಳುವುದಕ್ಕೆ ಅವಕಾಶವಿಲ್ಲ. ಇಲ್ಲ ದುಡ್ಡು ಕೊಡಬೇಕು ಇಲ್ಲವೇ ಸೆಕ್ಯೂರಿಟ್ ಕೊಡಬೇಕು ಎಂದರೆ ಹೇಗೆ ? ಯಾವುದಾದರೂ ಒಂದು ಕೋರ್ಟಿನ ಪ್ರೊಸೀಡಿಂಗ್ಸ್‌ನಲ್ಲಿ ಒಂದು ಸ್ಟೇ ಆರ್ಡರು ಕೊಡಬೇಕಾದರೆ ಅಥವಾ ಒಂದು ಅಟ್ಯಾಚುಮೆಂಟು ಕೊಡಬೇಕಾದರೆ ಅಥವಾ ಒಂದು ರೀಲನು ಅಪ್ಲಿಕೇಷನ್ನು ರಿಲೀಸು ಮಾಡಬೇಕಾದರೆ ಆಗ ಸೆಕ್ಯೂರಿಟಿ ಕೊಟ್ಟರೆ ಅದನ್ನು ರಿಲೀಸು ಮಾಡುತ್ತೇವೆ ಎಂದರೆ to the security and satisfaction to the court ಹೇಗೆ ? ಇದರಿಂದ ಹಣವಂತರೇನೋ ಬದುಕುತ್ತಾರೆ. ಅವರು ಕೊಟ್ಟ ಹಣವನ್ನು ವಸೂಲಿ ಮಾಡಿಕೊಳ್ಳುವುದಕ್ಕೆ ಅನುಕೂಲವಾಯಿತೇ ಹೊರತು ಬಡವರಿಗೆ ಇದರಿಂದ ಏನೂ ಉಪಯೋಗವಾದಂತಾಗಲಿಲ್ಲ.

The court is not satisfied with the defence and the plaintiff's reply on this point.

ಈಗ ಇನ್‌ಕಂಟ್ಯಾಕ್ಸ್ ಅಪೀಲು ಹಾಕುವಾಗ ದುಡ್ಡನ್ನು ಪೂರ್ತಿಯಾಗಿ ಮೊದಲು ಕಟ್ಟಿ ಅನಂತರದಲ್ಲಿ ಅಪೀಲು ಹಾಕಬೇಕೆಂದು ಇದೆ. ಹಾಗೆ ಇದರಿಂದ ಬಡವರಿಗೆ ರಿಲೀಫ್ ಏನೂ ಸಿಕ್ಕದಂತಾಗಲಿಲ್ಲ. ಕಾನೂನು ಈಗ ಮಾಡುತ್ತಿರುವುದು ಹಣವಂತರಿಗೆ ಅನುಕೂಲ ಮಾಡುತ್ತಿರುವುದಕ್ಕಾಗಿ ಎನ್ನುವುದು ಇದರಿಂದ ತೋರುತ್ತದೆ. ಹಣ ಕೊಡುವುದಕ್ಕೆ ಆಗಲಿಲ್ಲ ಎಂದು ಎಕ್ಸ್‌ಪಾರ್ಟಿ ಡಿಕ್ರಿಯಾಗಿದ್ದರೆ ಅಂತಹ ಕೇಸನ್ನು ಪುನಃ ಡಿಸ್ಮೈಡು ಮಾಡುವಾಗ ಎಷ್ಟೆನ್ನು ಕೊಡಬೇಕು ಮತ್ತು ಹಣ ಕೊಟ್ಟದ್ದಕ್ಕೆ ಸೆಕ್ಯೂರಿಟಿ ಕೊಡಬೇಕು ಎಂದರೆ ಹೇಗೆ ? ಇದರಿಂದ ಏನಾಗುತ್ತದೆ ಎಂದರೆ ಇದುವರೆಗೆ ಶ್ರೀಮಂತರಾದವರು ಹಣ ಕೊಟ್ಟಿದ್ದರೂ ಅದರ ಹಣ ಬಾಕಿಯಾಗಿ ವಸೂಲಾಗುವುದೇ ಕಷ್ಟವಾಗಿತ್ತು. ಈಗ ಇಂತಹ ಕಾನೂನಿನಿಂದ ಅವರಿಗೆ ಬಹಳ ಅನುಕೂಲ ಸಿಕ್ಕದಹಾಗಾಗುತ್ತದೆ.

(ಶ್ರೀ ಸಿ. ಜೆ. ಮುಕ್ಕಣ್ಣಪ್ಪ)

ಒಂದು ಕಡೆ ಬಡವರಿಗೆ ಅನುಕೂಲ ಮಾಡಿಕೊಡಬೇಕು ಎಂದು ಡೆಟ್‌ರಿಲೀಫ್ ಆಕ್ಟ್ ಎಂದು ರೈತರಿಗೆ ಅನುಕೂಲ ಮಾಡಲು ತಂದಿದ್ದೀರಿ. ಇನ್ನೊಂದು ಕಡೆ ಕಾನೂನು ಮಾಡುತ್ತ ಅವನು ಕೊಟ್ಟ ಹಣಕ್ಕೆ ಎಕ್ಸ್‌ಪಾರ್ಟಿ ಡಿಕ್ರಿಯಾದಾಗ ಆದರ ಮೇಲೆ ಅಪೀಲು ಮಾಡುವುದಕ್ಕೆ ಅವಕಾಶವಿಲ್ಲ. ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಕೋರ್ಟಿನಲ್ಲೂ ಅಪೀಲು ಮಾಡುವುದಕ್ಕೆ ಅವಕಾಶ ಇಲ್ಲ. ಹೈ ಕೋರ್ಟಿಗೇ ಹೋಗಬೇಕಾಗುತ್ತದೆ. ಇಲ್ಲ ನನ್ನ ಅನುಭವದ ಮೇಲೆ ಇದನ್ನು ಹೇಳುತ್ತಿದ್ದೇನೆ.

ಇದನ್ನು ತಾವು ಸ್ವಲ್ಪ ಯೋಚನೆ ಮಾಡಬೇಕೆಂದು ಇಲ್ಲಿ ಹೇಳುತ್ತಿದ್ದೇನೆ. ಸೆಕ್ಯೂರಿಟಿ ಎನ್ನುವಂತೆ ಇದರಲ್ಲಿ ಮಾಡಬಾರದು. ಈ ಕಾನೂನಿನಲ್ಲಿ ಇದನ್ನು ನೋಡಿದರೆ ಆ ರೀತಿ ಕಾಣುತ್ತದೆ. ಯಾವುದೇ ರೀತಿಯಲ್ಲೂ ಸೆಟ್ ಅಸೈಡು ಆಗಿರತಕ್ಕ ಡಿಕ್ರಿಯನ್ನು ಮುಂದೆ ರೆವ್ಯೂ ಮಾಡುವುದಕ್ಕೆ ಅವಕಾಶವೇ ಇಲ್ಲ ಎನ್ನುವಂತೆ ಇದರಲ್ಲಿ ಆಗುತ್ತದೆ.

ಇನ್ನೊಂದು ತೊಂದರೆ ಇದರಲ್ಲಿ ಆಗುವುದು ಎಂದರೆ ಸಣ್ಣ ಪುಟ್ಟ ನೌಕರಿ ಮಾಡುವವರಿಗೆ. ಇವರಿಗೆ ಎಂದರೆ 80 ರೂಪಾಯಿ, 100 ರೂಪಾಯಿ, 200 ರೂಪಾಯಿ, 300 ರೂಪಾಯಿ, ಈ ರೀತಿ ಸಂಬಳ ಬರುತ್ತಿರುವ ಜನರು ತುಮಕೂರು, ಸಿರಾ, ಮಧುಗಿರಿ, ಇತ್ಯಾದಿ ಜಾಗಗಳಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುವವರು ಬಹಳ ಕಷ್ಟಪಟ್ಟು ಅವರ ಜೀವನವನ್ನು ನಡೆಸುತ್ತಿರುತ್ತಾರೆ. ಹಾಗೆ ನಮ್ಮ ಬೆಂಗಳೂರು ನಗರದಲ್ಲಿ ಕೆಲವರು ಸಣ್ಣ ಸಂಬಳ ಬರುವಂತಹ ನೌಕರರರುಗಳು ತಮಗೆ ಬರುವ ವರಮಾನ ಸಾಲದುದಕ್ಕಾಗಿ ತಮ್ಮಲ್ಲಿರುವ ಪಾತ್ರೆ ಪದಾರ್ಥಗಳನ್ನು ಅಡವಿಟ್ಟಿರುವುದನ್ನು ನಾವು ಕಣ್ಣಾರೆ ನೋಡುತ್ತಿರುತ್ತೇವೆ. ಅಂತಹವರು ದುಡ್ಡು ಕೊಡುವುದಕ್ಕಾಗದ ಸಂದರ್ಭದಲ್ಲಿ ಅವರ ಮೇಲೆ ಡಿಕ್ರಿಯಾಗಿದ್ದರೆ ಅದರ ಮೇಲೆ ಇದರಂತೆ ನೀವು ಪ್ರಶ್ನೆ ಮಾಡುವ ಹಾಗಿಲ್ಲ. ಮೊದಲು ದುಡ್ಡು ಕಟ್ಟಿ ಅನಂತರ ಅಪೀಲು ಹಾಕಿ ಎಂದಂತಾಗುತ್ತದೆ. ನಾನು ರಾಯರಾಗಿ ಬಂದು ಇಲ್ಲಿ ಮಾತನಾಡುತ್ತಿಲ್ಲ. ತಾವು ಸಿ. ಪಿ. ಸಿ. ಪ್ರೊಸೀಡಿಂಗ್ಸ್ ಹಾಗೂ ಇನ್ನೂ ಎಷ್ಟೋ ಕಾಯಿದೆಗಳ ಪುಸ್ತಕಗಳನ್ನು ಓದಿದ್ದೀರಿ ಮತ್ತು ಅನೇಕ ಕೇಸುಗಳನ್ನು ನಡೆಸಿದ್ದೀರಿ. ಎಷ್ಟೋ ಕೇಸುಗಳಲ್ಲಿ ಗೆದ್ದೂ ಇದ್ದೀರಿ ಹಾಗೂ ಸೋತೂ ಇದ್ದೀರಿ! (ನಗು) ಆದುದರಿಂದ ನಾನು ತಮಗೆ ಕಾನೂನು ಹೊತ್ತಿಲ್ಲ ಎಂದು ಇಲ್ಲಿ ಹೇಳುತ್ತಿಲ್ಲ.

Mr. SPEAKER.—A seasoned litigant is as good as a lawyer.

ಶ್ರೀ ಸಿ. ಜೆ. ಮುಕ್ಕಣ್ಣಪ್ಪ.—ಆದರಿಂದ ನಾನು ಇಲ್ಲಿ ತಮ್ಮ ಮುಂದೆ ಅರಿಕೆ ಮಾಡುತ್ತಿರುವುದು ಕೋರ್ಟನ್ನೇನೋ ಸ್ಥಾಪನೆ ಮಾಡುತ್ತಾರೆ. ಮತ್ತು ಅದಕ್ಕಾಗಿ ಯಾವ ರೂಲ್ಸುಗಳಿವೆಯೋ ಅದರಂತೆ ನಡೆಸಿಕೊಂಡು ಹೋಗುತ್ತಾರೆ. ಅದರಿಂದ ಈ ರೀತಿಯಾದ ಅಧಿಕಾರವನ್ನು ಅಂತಹ ಕೋರ್ಟಿನ ನ್ಯಾಯಾಧಿಪತಿಗಳಿಗೆ ಕೊಟ್ಟರೆ ಇದರಿಂದ ಬಡಜನಕ್ಕೆ ಸ್ವಲ್ಪ ತೊಂದರೆಯಾಗುತ್ತದೆ. ಅದಕ್ಕಾಗಿ ಇದನ್ನು ಪರ್ಯಾಲೋಚನೆ ಮಾಡಿ ಹತ್ತನೆ ಕ್ಲಾಜ್ಜಿನಲ್ಲಿರುವ (ಎ) ಮತ್ತು (ಬಿ) ಸಬ್-ಕ್ಲಾಸುಗಳನ್ನು ತೆಗೆದು ಬಿಟ್ಟರೆ ಸರಿಯಾಗಿರುತ್ತದೆ ಎಂದು ಕಾಣುತ್ತದೆ. ಎಂದರೆ

> "(*a*) for an order to set aside a decrec passed *exparte* on grounds other than that summons in the suit was not duly served, or
>
> (*b*) for a review of judgment on grounds other than a mistake or error apparent on the face of the record."

ಎನ್ನುವುದನ್ನು ತೆಗೆಯಬಹುದು ಎಂದು ಸಲಹೆ ಮಾಡುತ್ತಿದ್ದೇನೆ.

Suppose a man is living in Magadi; a suit is filed against him in a small cause court.

Mr. SPEAKER.—I was myself served; I wanted to go, but floods came in the way.

Sri C. J. MUCKANNAPPA.—If the court believes that there are *bona fide* reasons as to why the party is unable to attend the court either on account of accident or some other incident.

"for a review of judgment on grounds other than a mistake or error apparent on the face of the record."

At any time the judgment-debtor can make application to review the judgment.

Mr. SPEAKER.—Subject to the law of limitation.

Sri C. J. MUCKANNAPPA.—Both of them have got a right—either the plaintiff or the defendant. What are all the ingredients to be satisfied either by the plaintiff or the judgment-debtor to review the judgement.

Mr. SPEAKER.—The Code of Civil Procedure may give it.

Sri C. J. MUCKANNAPPA.—Why does the State Legislature take shelter on the one hand under the Civil Procedure Code and again they want to take shelter under clause 10 of the Small Cause Courts Bill? ತಾವು ಎಲ್ಲ ಯೋಚನೆ ಮಾಡಬೇಕು. ತಮ್ಮದು ಬಹಳ ರೈಪ್ ಎಕ್ಸ್‌ಪೀರಿಯನ್ಸ್. ತಾವು ಆಕ್ಟೀವಾಗಿ ಪ್ರಾಕ್ಟೀಸ್ ಮಾಡುತ್ತಾ ಇದ್ದಿರಿ. ಶ್ರೀ ಕಡಿದಾಳ್ ಮಂಜಪ್ಪನವರು, ಶ್ರೀ ವೆಂಕಟ ರಾಮಯ್ಯನವರು ಅನುಭವವುಳ್ಳ ಪ್ರಾಕ್ಟೀಸಿಂಗ್ ರಾಯರುಗಳು. ತಾವೂ ತಮ್ಮ ಚೇಂಬರಿಗೆ ಹೋದಾಗ ಹೈಕೋರ್ಟ್, ಸುಪ್ರೀಂಕೋರ್ಟ್ ಡಿಸಿಜನ್ನುಗಳನ್ನು ಪರಿಶೀಲನುತ್ತಿರುತ್ತೀರಿ. ಆದರೆ ನಿಮ್ಮ ಅಭಿಪ್ರಾಯವನ್ನು ಕೊಡದಿರಬಹುದು. I do not know what are all the points brought before the court to convince the court for admitting a particular petition. ಕ್ಲಾಜು 10 ಅಪಾಯಕಾರಿ, ಬಡವರಿಗೆ ಕಷ್ಟ, ಸಂಕಟ ತರುತ್ತದೆ. ಇದರಲ್ಲ ಮೆಜಾರಿಟಿ ಇನ್‌ವಾರ್ಲ್ ಆಗುವವರು ಬಡವರು. ಆದ್ದರಿಂದ ಬಡವರ ಹಿತರಕ್ಷಣೆಯಾಗುವ ಹಾಗೆ ಮಾಡಬೇಕು. ಇದರಿಂದ ಬಡವರಿಗೆ ಕಿರುಕುಳವಾಗುತ್ತದೆ. ಇದನ್ನು ಕೂಲಂಕಷವಾಗಿ ಯೋಚನೆ ಮಾಡಬೇಕು. We are making law in the interests of the poor peo ple ಶ್ರೀ ವೆಂಕಟಗೌಡರ ಅಮೆಂಡ್‌ಮೆಂಟನ್ನು ಒಪ್ಪಿಕೊಂಡರೆ ಎಲ್ಲರಿಗೂ ಒಳ್ಳೆಯದಾಗುತ್ತದೆ. The majority of them involved here are poor people.

ಇದರಲ್ಲ ಪ್ರೆಸ್ಟೀಜ್ ಪ್ರಶ್ನೆ ಬರುವುದಿಲ್ಲ, ಆಳುವ ಪಕ್ಷ ವಿರೋಧ ಪಕ್ಷ ಎಂಬ ಮಾತು ಬರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಈ ತಿದ್ದುಪಡಿಯನ್ನ ಒಪ್ಪಿಕೊಳ್ಳಬೇಕೆಂದು ಪ್ರಾರ್ಥನೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ.

† Sri M. V. RAMA RAO.—I am bound to say that I am somewhat surprised at the amount of doubt and difficulty which clause 10 appears to have created this afternoon. The provision contained in clause 10 of the Bill is much the same as the provision contained in the Provincial Small Causes Act and the enactment of the year 1887—Section 17 in respect of which the law is fairly well settled by interpretation by the High Courts.

Mr. SPEAKER.—May I know whether the wording is the same?

Sri M. V. RAMA RAO.—For the better understanding of the difficulty and for the dispelling of it I shall read the text contained in Section 17 of the Provincial Small Causes Act, 1887:

"The procedure prescribed in the Code of Civil Procedure, 1908 shall, save in so far as otherwise provided by the court or by this Act, be the procedure followed in the court of small causes in all suits cognizable by it, and in all proceedings arising out of such suits."

(Sri M. V. Rama Rao)

That is the same wording in clause 10 as far as that part is concerned:

"Provided that an application—

(*a*) for an order to set aside a decree passed *ex parte*, or

(*b*) for a review of judgment

shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the court may, on a previous application made by him in this behalf have directed."

Sub-clause (2) of Clause 10:

"Where a person has become liable as surety under the proviso to sub-section (1), the security may be realised in the manner provided by Section 145 of the Code of Civil Procedure, 1908."

That part of the clause is also identical. I may add for the information of the Honourable Members that the original Section 17 of the Provincial Small Causes Act of 1887 was replaced by this section by Act I of 1926 and it is that part of the proviso which relates to the furnishing of security for the purpose of decree as an alternative of depositing the amount to court—that part was substituted by Act IX of 1905, and sub-clause (2) of Clause 10 which is identical with sub-section (2) of Section 17 of this Act was inserted by Act I of 1926. Therefore, it is not as if this Small Causes Act of 1887 which Honourable Members seem to construe as a very old and ante-dated enactment has been revived for the purposes of this Bill; it is not so and the exact import of what the previous application is or should be has also been judicially observed. When a party applies to set aside an *ex parte* decree under Section 17 (that is, clause 10 of our Bill) it may be regarded as consisting of two parts. First, a preliminary application to get a direction of the court with a view to getting the *ex parte* decree set aside. And secondly, after obeying the direction of the Court, the actual application to set aside the *ex parte* decree comes. The second part follows only after obeying the direction of the Court.

"Where an applicant is not prepared to deposit the decretal amount in cash, he must file an application prior to his application for setting aside the *ex parte* decree, to the effect that he would desire to give security for the performance of the decree and must obtain the direction of that Court beforehand. This provision is mandatory."

† Sri KADIDAL MANJAPPA.—It has been there since a long time. But, that was not in force in the old Mysore area. The judgment debtors can file application for setting aside the *ex parte* decrees without furnishing the security or depositing the amount. Now, the question is, whether that right could be curtailed on account of this measure.

Mr. SPEAKER.—The wording "previous application" is nothing new to a matter covered by the decision which shows there are two alternatives; one is to deposit cash in which case the question of making previous application does not arise; the other is to give security in which case he should apply previously. So, there in no confusion.

Sri KADIDAL MANJAPPA.—There is no confusion with regard to the wording.

Sri M. R. PATIL (Hubli).—Sir, the Provincial Small Cause Court Central Act as it stands before 1935 says:

> "Provided that an applicant—
>
> for an order to set aside a decree passed *exparte* on grounds other than that summons in the suit was not duly served, or for a review of judgment on grounds other than a mistake or error apparent on the face of the record, shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or give security to the satisfaction of the court for the performance of the decree or compliance with the judgment....."

So, it requires one to give security at the the time of giving the application. This is a deliberate amendment which could have been put in a more explicit manner. But, as it is put, it is likely to create some confusion. But, on a minute study of the interpretation which the High Court of Madras has arrived at, it is correct.

Mr. SPEAKER.—So, in the light of the law as it stood prior to the drafting of this clause, the interpretation of this is perfectly in accordance with it. There is no confusion at all.

Sri G. V. GOWDA.—But, even the Civil Procedure Code does not contemplate a previous application. We are trying to incorporat a provision which is not contemplated by the Civil Procedure Code.

Sri M. V. RAMA RAO.—Sir, I believe I have to make a motion for the further extension of time.

Mr. SPEAKER.—Shall we extend the time by another half-an-hour?

Sri C. J. MUCKANNAPPA.—Tomorrow, Sir.

Mr. SPEAKER.—What does the Hon'ble Minister say?

Sri M. V. RAMA RAO.—I shall probably take five or ten minutes, Sir

Mr. SPEAKER.—But there are amendments. I extend the time before adjourning the House by half-an-hour and adjourn the House to meet tomorrow at 2 P.M.

The House adjourned at Six of the Clock to meet again at Two of the Clock on Tuesday, the 10th December 1963.